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FILED
JUN 18 1965
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In the

Supreme Court of the United States

OCTOBER TERM, 1964

No. 170

ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois,
Plaintiffs-Appellants,

vs.

LAKE COUNTY PUBLIC BUILDING COMMISSION and **COUNTY OF LAKE**,
Defendants-Appellees,

and

LAKE COUNTY BAR ASSOCIATION,
Intervenor-Appellee.

MOTION TO DISMISS APPEAL

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and

LAKE COUNTY BAR ASSOCIATION,
Intervenor-Appellee.

MOTION TO DISMISS APPEAL

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Now comes Lake County Public Building Commission, a municipal corporation, County Of Lake, a body politic, Defendants-Appellees; Lake County Bar Association, an Illinois corporation not for profit, Intervenor-Appellee, by Andrew A. Semmelman, Bruno W. Stanczak, and Snyder, Clarke, Dalziel, Holmquist & Johnson, their attorneys, and present, pursuant to Rule 16, their Motion to Dismiss the above Appeal on the ground that no substantial federal question is presented and, in addition, that the judgment rests on an adequate non-federal basis.

OPINION BELOW.

The opinion of the learned trial judge is not appended to the jurisdictional statement, as required by Rule 15(h), or treated as a petition for a Writ of Certiorari, as required by Rule 23.1(i). This opinion was affirmed, without change, by the Illinois Supreme Court. It is reproduced in the appendix hereto at pages 1a to 3a.

Plaintiffs-Appellants, in their jurisdictional statement, represent that four opinions are involved. The first opinion, by the Supreme Court of Illinois, is appended to the jurisdictional statement (App., 47A-61A), but the second opinion is not. The third opinion is appended (App., 61A-65A). There was no fourth opinion.

The second opinion is reproduced in the appendix hereto at pages 4a-8a.

This second opinion stems from a Prohibition proceeding by the Lake County Bar Association and its President, the Lake County Public Building Commission, the County of Lake, and the Lake County Board of Supervisors, to prevent the Circuit Court from exercising jursdiction over the complaint filed by Plaintiffs-Appellants on the date petition for rehearing of their first suit was denied. The basis for seeking such Writ of Prohibition was that the second complaint sought to raise issues disposed of by the first opinion.

On this second suit the Supreme Court held "that the issues sought to be raised in the pending action have been litigated and disposed of by our former decision" (Supp. App. 6a). The Court considered the advisability of is-

suing the injunction of the Supreme Court to restrain the prosecution of the second suit, which raised the same issues already adjudicated, and then held, "We have concluded, however, that the matter may more appropriately be dealt with in the Circuit Court, either by a Counter-Claim for injunction in the pending case, or by an independent action for injunction."

Pursuant to this holding, a Counter-Claim for injunction was filed in the pending case from which an appeal was taken, resulting in the third opinion (App. 61A-65A), and from which Plaintiff-Appellants seek to appeal to this Court.

JURISDICTION.

No substantial federal question is presented. The judgment rests on an adequate non-federal basis.

QUESTION PRESENTED.

Did the Illinois Courts correctly enjoin Plaintiffs-Appellants from further prosecution of vexatious and harassing litigation, based on issues already raised and decided by the Illinois Supreme Court, in order to keep "litigation pending" and prevent the sale of bonds to build a much-needed public improvement?

NO STATUTE INVOLVED.

Plaintiffs-Appellants filed a class action in the State Court, appealed from an adverse decision to the State Supreme Court, which Court entered a final judgment adverse to Plaintiffs-Appellants on November 26, 1963. *No Petition for Writ of Certiorari or appeal to this Court followed.*

On November 26, 1963, the same day Plaintiffs-Appellants' petition for rehearing was denied by the State Supreme Court, another action was filed raising the same issues litigated and disposed of by the former decision. A Counter-Claim for an injunction was filed in this second suit. An injunction issued August 13, 1964 restraining Plaintiffs-Appellants from the institution or maintenance of vexatious or harassing litigation of any issue raised and decided by the State Supreme Court in the first case. The State Supreme Court found all the issues in the second case had been disposed of in the first case, and sustained the injunction issued by the Trial Court. The attempted appeal is from this order.

SUGGESTIONS IN SUPPORT.

(a) There Is No Federal Question Before This Court.

No substantial federal question is presented by the Plaintiffs-Appellants' bare allegation that a 1956 resolution of the County of Lake created a contract of a municipal corporation which was impaired by the state statute in question in contravention of Section 10 of Article 1 of the Federal Constitution. The resolution in question could not possibly be construed as more than a mere statement of intention by the County Board of Supervisors, and no law has ever been cited by Plaintiffs-Appellants to indicate such resolution could bind future Boards, or that it was in fact a contract.

Moreover, this allegation and theory was abandoned and waived in the first of these cases before the Illinois Supreme Court. (App. 59a) No appeal was taken from this final adjudication by the State Court.

(b) The Material Facts Of This Attempted Appeal.

Plaintiffs-Appellants filed a class action on January 7, 1963 to prevent the sale of revenue bonds for building a Courthouse Complex—a much-needed public improvement. The State Supreme Court sustained the action of the Trial Court in dismissing this suit, and on November 26, 1963 denied a petition for rehearing. *No appeal was taken from this final adjudication.*

In order to keep "litigation pending" and prevent the sale of these revenue bonds, Plaintiffs-Appellants filed the present suit, raising issues which the State Supreme Court found had been disposed of in the first case (App.

65a)and from which no appeal had been taken. The present appeal is a continued effort to keep "litigation pending."

(c) Plaintiffs-Appellants Had Their Day In Court.

The Jurisdictional Statement shows the Plaintiffs-Appellants herein sought to attack the Counter-Claim for injunction by a Motion to dismiss, which was denied. As indicated by the Counter-Claim (Supp. App. 9a-17a), the basis for seeking the injunction was that the Illinois Supreme Court had adjudicated the fact that the issues sought to be raised in the second action were litigated and disposed of by the first suit. This could be the only issue of fact contested by any answer filed thereto, and the highest Court of the State of Illinois had stated this was the appropriate remedy to terminate vexatious or harassing litigation. (Supp. App. 8a) Furthermore, the State Supreme Court stated in its opinion on the second appeal by Plaintiffs-Appellants herein, that this litigation was in fact harassing and vexatious. (App. 65a)

Plaintiffs-Appellants failed to include in their Appendix the order of the Trial Court entered July 24, 1964, specially setting all pending motions for August 13, 1964, as will appear from the supplementary appendix, page 18a. Pursuant to that order, Plaintiffs-Appellants' motion to dismiss the Counter-Claim was argued at great length. This motion was denied. No request was made by counsel for Plaintiffs-Appellants to further plead to the Counter-Claim, nor was any such motion ever made, and no answer of any kind to the Counter-Claim presented to the Court. The Trial Court's order of August 13, 1964 appears in the supplemental appendix pages 1a-3a.

Thus, the issuance of the injunction was in no way a deprivation of due process.

(d) No Revenue Act Is Involved.

Plaintiffs-Appellants claim the injunction "affectively (sic) precludes all taxpayers in the county from questioning the validity of their taxes." The injunction restrains "'vexatious or harassing litigation of any issue raised and decided, or governed in principle by the decision of the Supreme Court of the State of Illinois in *Bowman* v. *County of Lake,* 29 Ill. 2d 268." In that opinion the Court stated that the Revenue Act provided an adequate remedy for contesting taxes (App. 54a), and reiterated that position in their decision on the request for Writ of Prohibition. (Supp. App. 6a) Thus, tax objections are clearly not barred by such injunction.

Further, Plaintiffs-Appellants in effect are asking this Honorable Court to presume that County officials will act improperly and will in the future deprive citizens of their constitutional rights. Such presumptions are not to be indulged in by any Court, and if such action should later come to pass, the citizen would have his remedy to be utilized at that time.

Plaintiffs-Appellants assert as their 4th question that they were denied due process of law when the trial Court ruled that the prior suit, which was dismissed for want of equity, barred subsequent suit. On appeal from said order, the Illinois Supreme Court stated that Plaintiffs-Appellants were seeking the same relief as in their first case and that "we there fully explained that substantively and procedurally their complaint, if proved, would not warrant the relief sought." (App. 64a) The Court then goes on to say that despite Plaintiffs-Appellants' "procedural maneuvering" there were no differences between the first and second Bowman cases.

In response to question No. 5, which does not appear to be a question arising directly from this litigation, it should be noted that Plaintiffs-Appellants are complaining of the existence of representative or class actions, which they in this continuing litigation have sought to utilize. As pointed out by the State Supreme Court, ample opportunity is afforded taxpayers in such actions to assert their individual claims. (App. 64a)

In seeking to further their own intentions in this litigation, Plaintiffs-Appellants completely disregard that at some point public bodies must be allowed to proceed with improvements deemed to be in the public interest (App. 1a and 2a). Continuous litigation which prevents such action by public bodies is, as pointed out by the Illinois Supreme Court, "harassing and vexatious." (App. 65a) Unless such public bodies can rely upon a Court ruling of constitutionality in suits which allow intervention by interested parties, there can be no end to litigation and, consequently, no progress.

WHEREFORE, the Lake County Public Building Commission, a municipal corporation, County of Lake, a body politic, Defendants-Appellees, and Lake County Bar Association, an Illinois corporation not for profit, Intervenor-Appellee, pray that this Honorable Court may dismiss this appeal.

Respectfully submitted,

LAKE COUNTY PUBLIC BUILDING COMMISSION, a municipal corporation, COUNTY OF LAKE, a body politic, LAKE COUNTY BOARD OF SUPERVISORS, and LAKE COUNTY BAR ASSOCIATION, a not-for-profit corporation,

By: ANDREW A. SEMMELMAN
BRUNO W. STANCZAK

SNYDER, CLARKE, DALZIEL, HOLMQUIST & JOHNSON

By: GERALD C. SNYDER

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APPENDIX "A"

State Of Illinois
County Of Lake—ss.

In The
Circuit Court Of The Nineteenth
Judicial Circuit, Lake County, Illinois

ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois,
Plaintiffs-Counter Defendants,

vs.

LAKE COUNTY PUBLIC BUILDING COMMISSION, a municipal corporation, COUNTY OF LAKE, a body politic, LAKE COUNTY BOARD OF SUPERVISORS, LAKE COUNTY BAR ASSOCIATION, an Illinois corporation not for profit, and FRANK M. DALY,
Defendants-Intervenors and Counterclaimants.

In Equity — General No. 63-2648

ORDER.

This cause coming on further to be heard, and the Court having considered the arguments of counsel, the various Motions presented, and all documents filed or presented, finds:

1. The Illinois Supreme Court has adjudicated the fact that the issues sought to be raised in the within action have been litigated and disposed of by the former decision of the Illinois Supreme Court in *Bowman* v. *County of Lake*, 29 Ill. 2d 268.

2. The only new matters now presented to the Court, in addition to those alleged in the original Complaint filed herein, are the allegations as to the transfers of

funds by the County of Lake to the Public Building Commission subsequent to those alleged in the original Complaint filed herein, the constitutionality of the Public Building Commission Act and the acts of the Commission, the transfer of such funds are no different in principle from the earlier transfers and such transfers have been adjudicated to be proper, the constitutionality of the Public Building Commission Act has been adjudicated by the Illinois Supreme Court, as set forth in *The People, ex rel., Lake County Bar Association, et al.* v. *Circuit Court of Lake County, et al.,* and no matters have been raised, nor has there been an attempt to raise any matter which has not heretofore been adjudicated in principle or in fact.

3. This Court has jurisdiction to restrain the maintenance of vexatious and harassing litigation; the present litigation is vexatious and harassing, and the Plaintiffs, Robert Bowman and all other taxpayers of the County of Lake, their attorneys, agents and employees, should be restrained and enjoined from further prosecution of the pending case and from the institution or maintenance of vexatious or harassing litigation of any issue raised and decided, or governed in principle by the decision of the Supreme Court of the State of Illinois in *Bowman* v. *County of Lake,* 29 Ill. 2d 268.

4. The Counterclaimants have no adequate remedy at law, and unless the Order and Injunction of this Court is immediately issued as prayed, irreparable injury will result to Counterclaimants; Counterclaimants are financially responsible and have assets aggregating millions of dollars, which assets are subject to the order and

(Appendix A)

direction of this Court; all parties to the Counterclaim are before this Court; the Counter Defendants are amply secured by reason of such assets, and for good cause shown an Injunction should immediately issue herein without bond.

It Is, Therefore, Adjudged And Decreed as follows:

1. That Robert Bowman, and all other taxpayers of the County of Lake, State of Illinois, their attorneys, agents and employees be, and they are hereby perpetually restrained and enjoined from further prosecution of the pending case and from the institution or maintenance of vexatious or harassing litigation of any issue raised and decided, or governed in principle by the decision of the Supreme Court of the State of Illinois in *Bowman* v. *County of Lake,* 29 Ill. 2d 268.

2. That for good cause shown, the filing of an injunction bond be, and it is hereby waived, and this injunction be, and it is hereby declared to be immediately effective.

Enter this 13th day of August, A.D. 1964.

/s/ Charles G. Seidel
Judge

APPENDIX "B"

In The
Supreme Court Of Illinois
Docket No. 38331—June 18, 1964;
Rehearing denied September 25, 1964.

THE PEOPLE ex rel. LAKE COUNTY BAR ASSOCIATION et al.,

Petitioners,

vs.

CIRCUIT COURT OF LAKE COUNTY et al.,

Respondents.

Mr. JUSTICE UNDERWOOD delivered the opinion of the court:

In 1960, subsequent to an unsuccessful referendum on the question of issuing general obligation bonds to finance the construction of a new courthouse in Lake County, the board of supervisors formed the Lake County Public Building Commission for the purpose of constructing a new county courthouse, thereafter transferring the present courthouse land to the commission for use as a building site. Subsequent cash grants were made to the commission, and a lease was entered into between the county and the commission for rental of the courthouse space. The details of these transactions appear in our original opinion, *Bowman* v. *County of Lake,* 29 Ill. 2d 268.

On January 7, 1963, a complaint was filed in the circuit court of Lake County by Robert Bowman, on behalf of himself and all other taxpayers of Lake County, seeking a declaratory judgment that the creation of the Lake County Building Commission was void, the enabling act unconsti-

tutional, the transfers of funds and property to the commission improper, and the tax levies illegal, and praying injunctive relief restraining the county from accumulating or transferring funds to the commission and from levying taxes claimed by plaintiff to be excessive. A motion to strike this and an amended complaint was granted, leave to further amend denied, and judgment of dismissal entered. An appeal to this court followed, and we affirmed the trial court's action. *Bowman* v. *County of Lake*, 29 Ill. 2d 268.

On November 26, 1963, a rehearing was denied by this court, and on this same date a new complaint was filed in the Lake County Circuit Court by Bowman, representing himself and all other taxpayers, against the county, the board of supervisors and the commission. Confronted with this situation, the Lake County Bar Association, its president, Frank M. Daly, the Lake County Public Building Commission, the County of Lake and the board of supervisors thereof, filed in this court a petition for leave to file an original action of prohibition. The petition recited that the legal issues sought to be presented in the second action were identical in principle with those that had already been presented and decided by the trial court and by this court in the first case. It recited also the added inconvenience and expense that would be inflicted upon the taxpayers of the county by repeated litigation of legal contentions already decided, and it prayed for the issuance of a writ of prohibition to prevent the circuit court from exercising jurisdiction to nullify the previous decision of this court.

(Appendix B)

Leave to file the petition was granted, and the respondents, including the chief judge of the Lake County Circuit Court and Robert Bowman, have answered. We have examined the petition and the answer, and we find that no issue is raised in the second action that has not been raised and decided in the first. The only new matters in the present complaint are the allegations as to transfers of funds by the county to the commission subsequent to those alleged in the first writ and these are no different in principle from the earlier transfers and are governed by our earlier opinion. While we indicated in the first decision that no lease had been entered into between the two bodies, and no tax levied for the payment of rent, and the new complaint alleges the making of a lease, it fails to point out in what respects the lease or the levy of the annual tax to pay the rent fails to conform to the provisions of section 14(h), (i) and (j) of the Public Building Commission Act relating to leases or section 18 providing for the levy of a tax for the payment of rental. The constitutionality of those sections was previously determined. *People ex rel. Adamowski* v. *Public Building Commission of Chicago,* 11 Ill. 2d 125; *Bowman* v. *County of Lake* 29 Ill. 2d 268.

Our earlier decision clearly pointed out that the remedy as to the asserted claim of continued over-appropriations and tax levies was by filing objections to the validity of the tax levies in question, and that excessive levies, if they existed, would not impair the validity of the revenue bonds proposed to be issued.

While we are thus of the opinion that the issues sought to be raised in the pending action have been litigated and

disposed of by our former decision, and that nothing has been asserted in the pending action that could affect the validity of the proposed revenue bonds, there is sufficient doubt as to the propriety of the proposed remedy by way of original writ of prohibition to cause us to conclude that the writ of prohibition should not issue. The principal respondents are the judges of the circuit court, and it is not suggested that they propose to do anything other than to adhere to the former decision of this court. The situation thus closely resembles that presented in *People ex rel. Modern Woodmen of America* v. *Circuit Court of Washington County,* 347 Ill. 34. There, as here, this court had already fully adjudicated in one case the issues sought to be presented in a second action filed in the circuit court. An original writ of prohibition was sought from this court, but the petition for the writ was denied, because there was no indication that the trial court intended to take action in disregard of the decision of this court. It was not until the circuit court had issued an injunction, contrary to the decision of this court, that a subsequent application for a writ of prohibition was allowed. (347 Ill. at 47, 48.)

We are of the opinion, therefore, that it is inappropriate to issue a writ of prohibition directed to the judges of the circuit court, who have indicated no disposition to exceed their jurisdiction, or to flout the rulings of this court.

While we have thus concluded that the writ of prohibition should not issue, it does not follow that petitioners are without adequate remedy. The jurisdiction of a court of equity to restrain the maintenance of vexatious or

harassing litigation is well established, (28 Am. Jur. Injunctions, sec. 210; 43 C.J.S., Injunctions, sec. 40 h.) and we have concluded that that is the appropriate remedy in the present case. In view of the serious financial injury and inconvenience to the public that could result from successive lawsuits, apparently designed to prevent the issuance and sale of the proposed revenue bonds, we have considered the advisability of issuing the injunction of this court to restrain the prosecution of the pending case and the institution of further litigation. We have concluded, however, that the matter may move appropriately be dealt with in the circuit court, either by a counterclaim for injunction in the pending case or by an independent action for injunction. Should the imposition of such retraints result in a further appeal, the provisions of Rules 41 and 28—1 relating to expediting cases on review are available and the public interest may be safeguarded by requiring adequate security for the issuance of a *supersedeas* pending determination of the appealed issues.

Writ denied.

APPENDIX "C"

State Of Illinois
County Of Lake—ss.

In The Circuit Court Of The Nineteenth Judicial Circuit, Lake County, Illinois

ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois,
Plaintiffs-Counter Defendants,

vs.

LAKE COUNTY BAR ASSOCIATION, an Illinois corporation not for profit, FRANK M. DALY, LAKE COUNTY PUBLIC BUILDING COMMISSION, a municipal corporation, COUNTY OF LAKE, a body politic, and LAKE COUNTY BOARD OF SUPERVISORS,
Defendants-Counter Claimants.

In Equity — General No. 63-2648

COUNTERCLAIM

Now comes Lake County Bar Association, an Illinois corporation not for profit, Frank M. Daly, Lake County Public Building Commission, a municipal corporation, County of Lake, a body politic, and Lake County Board of Supervisors, Counter Claimants, by Snyder, Clarke, Dalziel, Holmquist & Johnson, Andrew A. Semmelman and Bruno W. Stanczak, their attorneys, and by leave of Court first had and obtained, file this their Counterclaim against Robert Bowman, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois, and counterclaiming say:

1. On January 7, 1963, a Complaint was filed in this Court by Robert Bowman, on behalf of himself and all

(Appendix C)

other taxpayers of Lake County, seeking a Declaratory Judgment that the creation of the Lake County Building Commission was void, the enabling act unconstitutional, the transfer of funds and property to the Commission improper, and the tax levied illegal, and prayed injunctive relief restraining the County from accumulating or transferring funds to the Commission, and from levying taxes claimed by Plaintiff to be excessive.

2. A Motion to Strike said Complaint and an Amended Complaint was granted, leave to further amend denied, and judgment of dismissal entered in this Court.

3. Counter Defendants appealed from the decision of this Court, briefs were filed in the Supreme Court of Illinois in connection with that appeal, and oral argument was had, and the Illinois Supreme Court affirmed the trial Court's action in *Bowman* v. *County of Lake*, 29 Ill. 2d 268.

4. On November 26, 1963, a rehearing was denied by the Illinois Supreme Court, and on this same date the within Complaint was filed by Robert Bowman, representing himself and all other taxpayers, against the County, the Board of Supervisors and the Commission.

5. The Lake County Bar Association is an Illinois corporation not for profit; one of the purposes for which it was incorporated is to promote, improve and facilitate the administration of justice; the administration of justice in Lake County is being impeded by an inadequate "Civil War" Court house with insufficient Court rooms to house judges and provide facilities needed to meet the demand for judicial decisions; that proper administration of justice is being impeded by such inadequate facilities, and

pursuant to its corporate purposes said Lake County Bar Association filed a Motion for Leave to File Petition for Original Writ of Prohibition in the Supreme Court of Illinois prohibiting this Court taking jurisdiction of the within cause of action.

6. Counter Claimant Frank M. Daly is, and has been for more than 20 years last past, a taxpayer of the County of Lake and State of Illinois; great financial loss will result to this Counter Claimant and all other taxpayers in Lake County, Illinois by reason of the inability to put into effect building and other contracts entered into for the excavation for a new Court house complex building and the erection of same, interest charges on revenue bonds is rising, and revenue bonds cannot be sold by reason of "litigation pending," and there will be further great financial loss suffered by this Counter Claimant and all other taxpayers of Lake County, Illinois if this litigation is permitted to pend.

7. No issue is raised in the within cause of action that has not been raised and decided and the cause determined by the Illinois Supreme Court in its final adjudication in the case of *Bowman* v. *County of Lake*, 29 Ill. 2d 268.

8. The Illinois Supreme Court in its opinion, a true and correct copy of which is attached hereto, marked "Exhibit A," held that no issue was raised in the within cause of action that was not raised and decided in the cause of action determined by the Illinois Supreme Court in *Bowman* v. *County of Lake*, 29 Ill. 2d 268.

9. This Court has jurisdiction to restrain the maintenance of vexatious or harassing litigation; there is serious financial injury and inconvenience to the public re-

sulting from this proceeding; this proceeding was filed on the date of the denial of the Petition for Rehearing in *Bowman* v. *County of Lake*, 29 Ill. 2d 268; this proceeding is designed to prevent the issuance and sale of the proposed revenue bonds to construct a Court house complex; there is a prior adjudication of the matters and things alleged and set forth in the Complaint filed in the within cause; there is no adequate remedy at law; and an injunction should issue against the Counter Defendants as hereinafter prayed.

10. The Illinois Supreme Court, in its opinion of June 18, 1964, stated: "In view of the serious financial injury and inconvenience to the public that could result from successive lawsuits, apparently designed to prevent the issuance and sale of the proposed revenue bonds, we have considered the advisability of issuing the injunction of this Court to restrain the prosecution of the pending case and the institution of further litigation. We have concluded, however, that the matter may more appropriately be dealt with in Circuit Court, either by a Counterclaim for injunction in the pending case, or by an independent action for injunction," as will more fully appear from "Exhibit A" attached hereto and made a part of this Counterclaim.

11. This Counterclaim is filed pursuant to said opinion of the Illinois Supreme Court.

12. That unless the Order and Injunction of this Honorable Court is immediately issued restraining Robert Bowman, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois, restraining the prosecution of the within cause and the institution of further litigation, irreparable injury will result to the Counter

(Appendix C)

Claimants herein; Counter Claimants are financially responsible and have assets aggregating millions of dollars, which assets are subject to the order and direction of this Court, all parties to this Counterclaim are before the Court, the Counter Defendants are amply secured by reason of such assets, and for good cause shown an injunction should issue herein without bond.

Wherefore Counter Claimants pray judgment as follows:

1. That this Court, by its Order, permanently enjoin and restrain Robert Bowman, and all other taxpayers of the County of Lake, State of Illinois, from prosecution of the within cause and from the institution of further litigation raising any issue adjudicated in *Bowman* v. *County of Lake,* 29 Ill. 2d 268.

2. That said injunction may issue under Order of this Honorable Court immediately and without bond for good cause shown.

3. That Counter Claimants may have such other, further, or different relief in the premises as the Court may deem equitable and proper.

Snyder, Clarke, Dalziel, Holmquist
& Johnson
Andrew A. Semmelman
Bruno W. Stanczak
/s/ Gerald C. Snyder,
Attorneys for Defendants-Counter Claimants.

(Appendix C)

EXHIBIT A

Docket No. 38331—Agenda 12—May, 1964.

The People *ex rel* Lake County Bar Association *et al.*, Petitioners, v. Circuit Court of Lake County *et al.*, Respondents.

Mr. Justice Underwood delivered the opinion of the court:

In 1960, subsequent to an unsuccessful referendum on the question of issuing general obligation bonds to finance the construction of a new courthouse in Lake County, the board of supervisors formed the Lake County Public Building Commission for the purpose of constructing a new county courthouse, thereafter transferring the present courthouse land to the commission for use as a building site. Subsequent cash grants were made to the commission, and a lease was entered into between the county and the commission for rental of the courthouse space. The details of these transactions appear in our original opinion, *Bowman* v. *County of Lake*, 29 Ill. 2d 268.

On January 7, 1963, a complaint was filed in the circuit court of Lake County by Robert Bowman, on behalf of himself and all other taxpapers of Lake County, seeking a declaratory judgment that the creation of the Lake County Building Commission was void, the enabling act unconstitutional, the transfers of funds and property to the commission improper, and the tax levies illegal, and praying injunctive relief restraining the county from accumulating or transferring funds to the commission and from levying taxes claimed by plaintiff to be excessive. A motion to strike this and an amended complaint was granted, leave to further amend denied, and judgment of dismissal entered. An ap-

peal to this court followed, and we affirmed the trial court's action. *Bowman* v. *County of Lake,* 29 Ill. 2d 268.

On November 26, 1963, a rehearing was denied by this court, and on this same date a new complaint was filed in the Lake County Circuit Court by Bowman, representing himself and all other taxpayers, against the county, the board of supervisors and the commission. Confronted with this situation, the Lake County Bar Association, its president, Frank M. Daly, the Lake County Public Building Commission, the County of Lake and the board of supervisors thereof, filed in this court a petition for leave to file an original action of prohibition. The petition recited that the legal issues sought to be presented in the second action were identical in principle with those that had already been presented and decided by the trial court and by this court in the first case. It recited also the added inconvenience and expense that would be inflicted upon the taxpayers of the county by repeated litigation of legal contentions already decided, and it prayed for the issuance of a writ of prohibition to prevent the circuit court from exercising jurisdiction to nullify the previous decision of this court.

Leave to file the petition was granted, and the respondents, including the chief judge of the Lake County Circuit Court and Robert Bowman, have answered. We have examined the petition and the answer, and we find that no issue is raised in the second action that has not been raised and decided in the first. The only new matters in the present complaint are the allegations as to transfers of funds by the county to the commission subsequent to those alleged in the first writ and these are no different in principle from the earlier transfers and are governed by our earlier opinion. While we indicated in the first decision that no lease had been entered into between the two bodies, and no tax levied

for the payment of rent, and the new complaint alleges the making of a lease, it fails to point out in what respects the lease or the levy of the annual tax to pay the rent fails to conform to the provisions of section 14(h), (i) and (j) of the Public Building Commission Act relating to leases or section 18 providing for the levy of a tax for the payment of rental. The constitutionality of those sections was previously determined. *People ex rel. Adamowski* v. *Public Building Commission of Chicago,* 11 Ill. 2d 125; *Bowman* v. *County of Lake,* 29 Ill. 2d 268.

Our earlier decision clearly pointed out that the remedy as to the asserted claim of continued over-appropriations and tax levies was by filing objections to the validity of the tax levies in question, and that excessive levies, if they existed, would not impair the validity of the revenue bonds proposed to be issued.

While *we are thus of the opinion that the issues sought to be raised in the pending action have been litigated* and disposed of by our former decision, and that nothing has been asserted in the pending action that could affect the validity of the proposed revenue bonds, there is sufficient doubt as to the propriety of the proposed remedy by way of original writ of prohibition to cause us to conclude that the writ of prohibition should not issue. The principal respondents are the judges of the circuit court, and it is not suggested that they propose to do anything other than to adhere to the former decision of this court. The situation thus closely resembles that presented in *People ex rel. Modern Woodmen of America* v. *Circuit Court of Washington County,* 347 Ill. 34. There, as here, this court had already fully adjudicated in one case the issues sought to be presented in a second action filed in the circuit court. An original writ of prohibition was sought from this court, but the petition for the writ was denied, because there was no indi-

cation that the trial court intended to take action in disregard of the decision of this court. It was not until the circuit court had issued an injunction, contrary to the decision of this court, that a subsequent application for a writ of prohibition was allowed. (347 Ill. at 47, 48.)

We are of the opinion, therefore, *that it is inappropriate to issue a writ of prohibition directed to the judges of the circuit court, who have indicated no disposition to exceed their jurisdiction, or to flout the rulings of this court.*

While we have thus concluded that the writ of prohibition should not issue, it does not follow that petitioners are without adequate remedy. The jurisdiction of a court of equity to restrain the maintenance of vexatious or harassing litigation is well established, (28 Am. Jur., Injunctions, sec. 210; 43 C.J.S., Injunctions, sec. 40 h.) and *we have concluded that that is the appropriate remedy in the present case.* In view of the serious financial injury and inconvenience to the public that could result from successive lawsuits apparently designed to prevent the issuance and sale of the proposed revenue bonds, *we have considered the advisability of issuing the injunction of this court to restrain the prosecution of the pending case and the institution of further litigation.* We have concluded, however, that the *matter may move appropriately be dealt with in the circuit court,* either *by a counterclaim for injunction in the pending case* or by an independent action for injunction. Should the *imposition of such restraints result in a further appeal, the provisions of Rules 41 and 28—1 relating to expediting cases on review are available* and the public interest may be safeguarded by requiring adequate security for the issuance of a *supersedeas* pending determination of the appealed issues.

Writ denied.

APPENDIX "D"

State Of Illinois
County Of Lake—ss.

In The Circuit Court Of The Nineteenth Judicial Circuit, Lake County, Illinois

BOWMAN, etc., et. al.,

vs.

LAKE COUNTY PUBLIC BLDG. COMM. etc., et al.
Gen. No. 63-2648

ORDER

On Motion of Attorneys for the parties and the Court being advised in the premises and having heard arguments of Counsel,

It Is Ordered:

1. Hearing on all pending motions is hereby set for Thursday, August 13, 1964 at 9:30 A.M. or as soon thereafter as may be heard.

2. Depositions authorized by Separate Order herein shall be completed within One day.

3. Plaintiffs' Motions for Substitution of Parties and Amended Complaint are hereby denied.

Enter: /s/ Charles G. Seidel
Judge.

Dated at Waukegan, Illinois
this 24th day of July A.D. 1964.
Approved: /s/ P. E. Hamer
Attorney for Plaintiffs

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